

IN THE MATTER OF

Kathleen Romanowski,
Complainant

and

Lucent Technologies, Inc.,
Respondent

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

CHARGE NO.: 2000 CF0473
EEOC NO.: 21B 993009
ALS NO.: 11527

This matter is before me for consideration of Respondent's Motion to Dismiss ("Motion") filed on July 11, 2003. Complainant did not respond to the Motion, but Respondent filed a reply on September 12, 2003 suggesting that the matter was ready to be concluded. The Motion is now ready for decision.

The complaint in this case was filed by the Illinois Department of Human Rights on behalf of Complainant on May 3, 2001 and Respondent filed its verified answer on June 5, 2001. A scheduling order was entered on July 3, 2001, but on that same day, Complainant filed a Motion to Stay in which she noted that she requested a “right to sue” letter from the EEOC. The latter motion was entered and continued. Because no federal cause of action was filed, a new scheduling order was entered on October 23, 2001. Neither party appeared at the next status hearing on February 14, 2002. Then, at the next status hearing on March 26, 2002, Complainant confirmed that a suit was filed in the federal district court and the motion to stay was granted.

The federal matter remained pending at the status hearings on September 24, 2002, March 13, 2003 and April 22, 2003. However, on June 12, 2003, the stay was dissolved as the federal action was completed. Respondent was given leave to file its motion to dismiss by July 11, 2003.

A briefing schedule was set on July 24, 2003, but Complainant did not file a response by August 22, 2003 as required in that order. After Respondent's reply was filed on September 12, 2003, there has been no further activity in this case.

Findings of Fact

1. Complainant filed charge No. 2000CF0473 with the Illinois Department of Human Rights on or about August 27, 1999, alleging that she was aggrieved by practices of discrimination due to her sex, female, prohibited by Section 2-102(A) of the Illinois Human Rights Act. The Department filed her complaint with the Commission on May 3, 2001.

2. At all times relevant, Respondent was an "employer" as defined by the Act and was subject to the provisions of the Act.

3. Complainant filed a complaint with the United States District Court for the Northern District of Illinois on October 31, 2001. This complaint alleges that Respondent treated her differently during her employment because of her sex, female.

4. The federal complaint was dismissed on November 22, 2002 when the district court granted Respondent's motion for summary judgment. Complainant filed a notice of appeal with the Seventh Circuit on December 2, 2002, but she never perfected the appeal. The appeal was dismissed on July 9, 2003 because Complainant failed to file her brief.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(c) respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. There is an identity among the parties, facts and subject matter between the

complaint filed with the Commission on May 3, 2001 and that filed by Complainant with the federal district court on October 31, 2001.

4. The disposition of Complainant's case in the federal courts is *res judicata* with regard to her complaint at the Commission.

5. The complaint here should be dismissed with prejudice.

Discussion

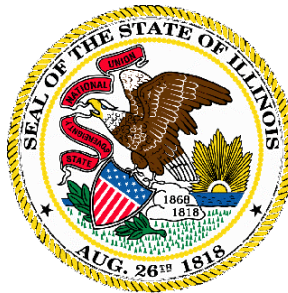
Respondent's Motion asks that this case be dismissed because the final disposition of Complainant's federal case is *res judicata*. The standards for application of the doctrine of *res judicata* were stated by the Commission in Blissitt and City of Chicago, Ill. H.R.C. Rep. (1987CF1454, January 13, 1995). There are three requirements that must be met: a) the parties in the present action must be the same or be in privity with the parties in the prior action; b) the cause of action must be the same in both cases; and, c) a decision on the merits must have been made in the earlier case. All three of these requirements are met in the instant case.

Based on the memorandum of law filed by Respondent, and unopposed by Complainant, there is no dispute that the requirements listed in Blissitt have been satisfied. That is, the parties are the same in both the federal case and the case now before the Commission, the cause of action is the same and the action of the federal court constitutes a final disposition on the merits of the complaint filed in that forum. The record amply shows that there is an identity between the causes of action in the federal and Commission cases. An examination of the complaints filed in the two cases can only lead to a conclusion that the allegations in the Commission complaint are included in their entirety within the federal complaint. Accordingly, I find that there is identity of the cause of action alleged by Complainant in the Commission complaint and in her federal complaint.

All three elements of the test for *res judicata* stated in Blissitt are met in the present case and I recommend that this complaint be dismissed with prejudice.

Recommendation

It is recommended that the complaint and underlying charge in this matter be dismissed with prejudice.



ENTERED:

November 7, 2003

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

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